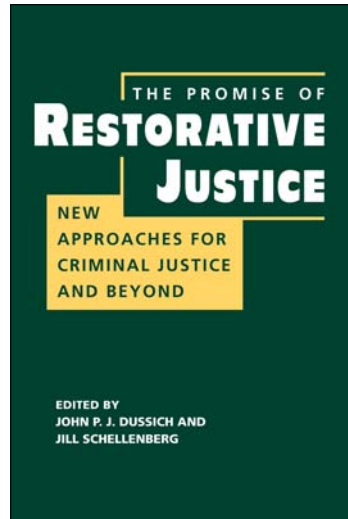


EXCERPTED FROM

The Promise of
Restorative Justice:
New Approaches for
Criminal Justice and Beyond

edited by
John P. J. Dussich
and Jill Schellenberg

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ISBN: 978-1-58826-723-8 hc



LYNNE RIENNER PUBLISHERS

1800 30th Street, Ste. 314

Boulder, CO 80301

USA

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fax 303.444.0824

This excerpt was downloaded from the
Lynne Rienner Publishers website
www.rienner.com

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1

Introduction

John P. J. Dussich and Jill Schellenberg

Viewed through a restorative justice lens, “crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance” (Zehr, 1990, p. 118). Restorative justice

holds that criminal behavior is primarily a violation of one individual by another. When a crime is committed, it is the victim who is harmed, not the state; instead of the offender owing a “debt to society” which must be expunged by experiencing some form of state-imposed punishment, the offender owes a specific debt to the victim which can only be repaid by making good the damage caused. (Zehr, 1990, p. 118)

The rallying concept of this book is that restorative justice concepts, principles, and practices need not be limited to criminal justice activities but can be appropriate and even advantageous to many other social situations where conflicts occur. This has been the core theme in our search for suitable manuscripts for this anthology over the past three years. We are pleased to present in Part 1 of the book chapters that personify this broader concept and to bring the powerful messages of the promise of restorative justice to victims and offenders; the chapters of Part 2 bring those same messages to the broader world. Here are the findings of our two-part journey.

Chapter 2, “Innovations in Correctional Settings,” discusses society’s expectations that criminals are deterred by the threat of the punishment that corrections represent; that punishment teaches criminals never to offend again and thus thwarts them from reoffending; that punishment causes offenders sufficient suffering that they strive to avoid it; and that punishment might cause those punished to change their way of thinking and feeling such that they become rehabilitated. However, the notion that something that was lost by the

victims is given back to the victim or the community because of the punishing experience seems illogical. This overview by Mario Gaboury and Duane Ruth-Heffelbower is comprehensive, compelling, and mostly focused on the United States. This chapter includes sections on special courts, victim-offender dialogue, conflict resolution, offender reentry programs, victim awareness training, victim impact panels, offender family reconciliation, and restorative justice boards. When reading this chapter, one is struck by how many unusual restorative justice applications exist related to corrections and how well developed they have become. In each of these new programs, there is much hope, much success, and much conviction that, no matter what the status of the offender, using these restorative justice principles makes the lives of offenders better and also benefits the lives of their victims.

In Chapter 3, “Working with Sex Offenders,” Clare Ann Ruth-Heffelbower notes that among many laypersons who first learn of restorative justice, there is the notion that its use is usually limited to situations where there is minimal involvement between offender and victim and where the offense is not serious. Thus, the perception is that prosecutors should refer only mild juvenile property cases to mediation—for example, cases of graffiti or vandalism of public property. However, the author explains in this chapter how the use of restorative justice principles can deal with the unique conflicts between victims and offenders of sexual assault. At first, she addresses the misconceptions and stigmas associated with sex offenses as a major challenge faced by those trying to resolve the conflicts between these offenders and their victims so as to help heal and restore the lives of all involved. She then explains how the resources of restorative justice are particularly well suited for the conditions involved in sex cases, especially treating all parties concerned as human beings, ultimately increasing the potential for having much safer communities compared to the process now in effect. To exemplify how restorative justice has been successfully applied to sex offenders, she presents the Circles of Support and Accountability. This is a program that originated in Ontario, Canada, in 1994 and is now being used throughout that country and in many other countries, including the United States. The main focus of this program is reflected in its name: support and accountability. Two major studies that centered on measuring effectiveness have since been conducted. Both have found not only major benefits to all stakeholders—offenders, victims, and communities—but also significant reductions in recidivism. The use of restorative justice principles in dealing with the aftermath of sexual offending, despite the major challenges, has proven to offer significant benefits to restoring peace to all involved.

In Chapter 4, “A Community Responds to Elder Abuse,” Arlene Groh reflects on a restorative justice view in the long search to find solutions to the complex crime of elder abuse; on a Canadian community that came together to identify, respond to, and prevent elder abuse; on the ripple effect of restorative justice as a way of life; and on the ways the pillars of restorative justice values

and principles empowered the community to imagine new ways of being, to problem-solve on a deeper level. This chapter views, from a restorative justice perspective, the importance of understanding the multiple and complex root causes of elder abuse, such as a possible history of difficult family relationships, including past abuse, a history of emotional or psychiatric problems, substance abuse, the abuser's emotional and financial dependence on the "victim," or difficulty in caring for the dependent older person. This author highlights how collaborative agencies have helped elders find emotional and physical safety using restorative principles that include victims, family members, and the community. The stated goal of these agencies is to end the cycle of violence that often damages and destroys families in elder abuse cases.

Chapter 5, "A Victim with Special Needs: A Case Study," argues that because of their vulnerabilities, both obtrusive and unobtrusive, handicapped persons represent a large and persistent group of potential crime victims. These vulnerabilities are greatly magnified after their first victimization, because their experience confirms to them and to those who care for them that their ability to protect themselves is significantly weaker than that of nonhandicapped persons. For most handicapped victims, increased helplessness is a major part of the victimization impact. This chapter is author Jill Schellenberg's personal story of her daughter's brutal rape. She recounts how she (and her family) reacted to this victimization from a Mennonite faith perspective, which emphasizes peace and reconciliation in relationships. This moving account also takes the reader to the very heart and soul of her struggles with the religious issues of forgiveness in the face of anger and hatred toward the offender and relates her (and her family's) attempts to cope by using restorative justice as a resource to achieve restoration and reconciliation, at the same time trying to be true to her daughter, her faith, her family, her profession, and herself.

In Chapter 6, "Recovery and Restoration in Victim Assistance," John P. J. Dussich challenges the reader to consider whether the phrase "one would think that victim services and restorative justice are natural partners" is a myth. Yet, there are differences between these two camps that have rarely been elucidated, and perhaps therein is the truth. The author lays the foundation of restorative justice by giving the history of victim services and explaining why it was started and what its mission is. Combining restorative justice—which has traditionally been seen as being offender-oriented—and victim services, which has its own history of being victim-focused and sometimes antioffender, can be difficult to reconcile. The author notes that the basic challenge of victim assistance is to understand both the behavioral and legal paradigms and to find a way to operate within these two different orientations, ultimately bringing the victim to a point of recovery *and* restoration. This chapter challenges present and future efforts to create victim service models that are entirely focused on helping victims so that they can be restored and recovered, facilitated by the unique characteristics of restorative justice principles.

In Chapter 7, “Restorative Options for an Offender’s Spouse,” Shannon Moroney relates a poignant personal experience with restorative justice from her perspective as the wife of a serious sex offender in Canada. Zehr’s definition that restorative justice sees crime as fundamentally causing harm to human relationships is true in Moroney’s case. Her life was profoundly altered as a result of the crime her husband committed—a crime in which she played no part. She was torn between the loyalty she felt to her husband and the realization of how deeply he hurt his victims. She found that every relationship in her life was affected by the crime he committed. The criminal justice system does not really address the issue of offenders’ family members also being victims. How do these indirect victims cope with the system, with their family member, and with their own shame by association? Restorative justice seems to offer the possibility of fostering the needed healing for these family members. Restorative principles seek to restore all who are harmed—that is, everyone who is affected by the crime. The author experienced the ripple effects that crime creates in the lives of families—families that suffer from guilt by association. However, she was able to emerge from the experience a stronger and wiser person, equipped and willing to help others in similar situations.

Chapter 8 speaks to the often-excluded American discussions about criminal justice among Native American people, who also deserve a place at the table of justice, especially with restorative justice. Author Julie C. Abril’s words in “Applications in Native American Indian Tribal Communities” reflect the compelling problems that native people encounter, considering that their traditional system was originally more restorative in nature than the current retributive criminal justice system. This juxtaposition of restorative and retributive systems is particularly problematic in native communities. The author notes that when tertiary mechanisms of social control—for example, the police—attempt to control behavior, they often will fail if they are not accepted by the indigenous community. The tribal community engages in a negotiation of power between community members and the formal justice system. One such negotiation relates to having the police respond to spiritual matters because the tribal community demands that the police “do their job.” Most Indians in the community cited felt that the police were responsible for responding to community problems. The chapter elaborates on the complexities of the two conflicting systems and the ways each system can learn from the other.

Chapter 9, “Mediation: The Case of Bulgaria,” presents restorative justice in a small country relatively unknown to many. According to author Dobrinka Chankova, restorative practices associated with large developed nations are gaining acceptance around the world, including in smaller countries such as Bulgaria. Chankova cites some interesting statistics related to the recognition of restorative and mediation practices among the criminal justice system and the general public in Bulgaria. She states that it is a common belief that mediation cannot and does not attempt to replace traditional criminal justice but rather aims to complement it sensibly. One cannot possibly believe that all deficiencies

of justice administration will be set off by introducing mediation. However, as an integral element in the criminal justice system, mediation can indeed bring better results—namely, satisfactory compensation for the victims of crime, faster procedures, elimination of excessive procedural formalism, and reduced use of imprisonment. Bulgaria seems poised to implement restorative justice at all levels in its criminal justice system.

In Chapter 10, “Restorative Justice and the Death Penalty,” the irrevocable character of the term *death penalty* seems antithetical to the concept of restorative justice, at least for the offender. However, despite the major emphasis on the victim’s needs and restoration, using restorative justice principles in death penalty cases can also provide an important benefit for the offender. Although the chapter focuses on what is perhaps one of the most victim-centric of all restorative justice programs, it is not exclusively about victim restoration. Author Howard Zehr presents the history of a program that started in 1995, a relatively recent creation within the “restorative justice movement.” He identifies the beginning of the program with the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and the subsequent trial of Timothy McVeigh. This initiative is called defense-initiated victim outreach (DIVO). Two key restorative justice principles form the foundation of DIVO: “the importance of victim/survivor needs and choices and, to a lesser extent, the principle of encouraging offender accountability.” In a critical way, DIVO fills an important gap in the way justice is traditionally provided—that is, with virtually no constructive communication between the victim and the defense attorney. Hence, it is appropriate to use the metaphor of a bridge to describe the role of the victim outreach specialist (VOS), a person who is specially trained for the DIVO program to serve as a link between the interests and work of the defense attorney and the concerns and needs of victims. However, the VOS, although an advocate for the survivor, does not become involved in the issue of the death penalty. The DIVO program has produced *Principles of Practice*, guidelines that provide a basic orientation to how this process functions. After more than ten years of experience, DIVO has proven itself and has received high grades by those involved. The American Bar Association, as early as 2003, recognized the value of this program and has published guidelines for defense counsel functions. Other pioneer applications that have legitimized this program have been the federal defender system’s JustBridges project and the Defender Services Committee, as well as the state of Georgia’s Council for Restorative Justice. Although unique in its legal venue and its recent application, as Zehr points out in his ending paragraph, the three fundamental values of restorative justice are appropriate for DIVO: (1) “respect for everyone involved,” (2) “humility about the limits of what any of us can know,” and (3) “the importance of approaching this work—and all of life—with a spirit of awe or wonder.”

In Chapter 11, “Restorative Politics,” Arthur Wint provides vivid examples from all over the world—from Northern Ireland to North and South Korea to South Africa—of how international crises could be handled restoratively.

The author notes that the world had expected the most ghastly bloodbath to overwhelm South Africa, but that has not happened. Then the world thought that, after a democratically elected government was in place, those who for so long had been denied their rights, whose dignity had been trodden underfoot, callously and without compunction, would go on the rampage, unleashing an orgy of revenge and retribution that would devastate their common motherland. Instead, there was this remarkable Truth and Reconciliation Commission to which people told their heartrending stories—victims expressing their willingness to forgive and perpetrators telling of sordid atrocities while also asking for forgiveness from those they had wronged so grievously. This chapter dramatically and compellingly illustrates the international possibilities for using restorative principles in politics.

Chapter 12 asks the question: Who would imagine that a setting like business might find the principles of restorative justice applicable? However, as author Duane Ruth-Heffelbower succinctly states, “Restorative justice finds its application any time one person does not feel respected by another, whether or not the other person knows it.” This chapter, “Solutions for Business Conflicts,” is written in a straightforward style based on direct consulting experiences. It provides an overview of the typical conflicts that exist among the employees in any business and then presents the simple logic of how the three basic movements of restorative justice—“acknowledge injustices, restore equity, and clarify future intentions”—can be applied. These will help achieve what he refers to as restorative practices to remove references to “adversarial legalism” and facilitate resolving conflicts in business settings. This chapter also includes a well-written appendix that contains the section of the Faculty Handbook from Fresno Pacific University relating to the termination for cause, which the author uses as his main reference for working in an employee/employer business setting.

Chapter 13 makes including children as stakeholders in a restorative justice proceeding seem appropriate. The formal procedures of restorative justice have mostly been used with adults in conflict, so the prospect of considering children is unusual. We often think that children are the most vulnerable citizens, cloaked in innocence and with limited understanding. The application of restorative justice would seem to require an advanced level of understanding, a degree of maturity not normally expected of children. In this chapter, “New Skills for Children and Schools,” Marian Liebmann from the United Kingdom writes about the use of restorative justice for children, especially in schools in her country where it started in 1981 with a conflict resolution program called the Kingston Friends Workshop Group. The term *restorative justice* was first used in a restorative conferencing model for young offenders by the Thames Valley Police in the 1990s. The same police department began using this model for schoolchildren with techniques learned from Australia, and it was referred to as “restorative justice in schools.” In schools, these techniques can be used not only for obvious wrongdoings but also for the conflicts that arise between students, and between

students, teachers, and staff. The opportunity to use restorative justice in schools has one major advantage over working with adults, in that children have less to unlearn. They can easily be taught to deal with conflicts, and what they learn will be useful for the rest of their lives. The three key principles in using restorative justice at schools are as follows: (1) “providing all those affected by a conflict or a problem the opportunity to air their experiences, their feelings, and their needs, and to feel heard”; (2) “involving everyone affected in finding a mutually acceptable way forward”; and (3) “ensuring that everyone involved becomes accountable for their possible contribution to the presenting incident.” One of the key concepts in the use of restorative justice in schools is to adopt the “whole school approach” so that all persons involved understand and follow the principles of restorative justice. The potential for all schoolchildren to learn how to apply these principles not only at school but also in their daily life is a powerful idea that offers promise to all children in all parts of the world.

In Chapter 14, “Adolescent Bullying: The Whole-School Approach,” Dennis Wong from Hong Kong tackles the problem of bullying prevention using restorative principles. He points out that it is well established in the bullying prevention literature that a punitive approach, such as reprimanding bullies, calling parents to school, and suspending students, is ineffective. The punitive approach, which values establishing blame and individual accountability, not only cannot resolve conflicts but also makes the relationships between bullies and victims much worse because of the interactive effect of various types of reinforcement among bullies, victims, and bystanders during bullying episodes. This chapter compares and contrasts the zero-tolerance strategy of conflict management in schools—such as punishing the offenders through demerits, suspension, and the involvement of parents—with restorative justice practices offering another means of minimizing the negative consequences of social control interventions and maximizing the opportunity for empowering proactive interventions. The author points out that children who exhibit aggressive behavior may continue a progressive developmental pattern toward severe aggression or violence. To stop the negative spiral effect of school bullying, the restorative justice practice seems to be a well-balanced strategy that could involve the victim, the offender, and the stakeholders in the community in a search for solutions that promote repair, reconciliation, and reassurance. This author gives statistically strong reasons why schools should go through a process whereby all parties with a stake in bullying come together to resolve collectively how to deal with the aftermath of the bullying event and its implications for the future, leading to the development of a positive climate that makes students less vulnerable to proactive as well as reactive aggression.

Chapter 15 asks us to consider discipline in schools in a different light. The prospect of punishing someone, especially for noncriminal behavior in an academic setting, is, for most teachers and school administrators, unpleasant and incongruent with the ideals of pedagogy; it is also frustrating when realizing that

it is usually counterproductive. The conversion of a major social structure, in this case the method and structure of applying discipline at a major university, is usually difficult to achieve and causes the school culture to take notice, especially if it is successful. This program at Fresno Pacific University was a bold and creative change that came about by the honest realization that the existing retributive system did not produce acceptable outcomes and by the availability of experts in restorative justice, a model that had been tested and proven to be effective in other settings. This chapter, "Dispute Resolution in Higher Education," by Ron Claassen and Zenebe Abebe, gives further support to the idea that a sound principle for conflict resolution and restoration can be successfully used in more than criminal justice settings. This new practice shows how creativity, courage, and wisdom can be applied to resolve one of the many important challenges in the administration of learning.

In Chapter 16, "Restorative Discipline in Athletics," Dennis Janzen writes about restorative justice in sports. Sports is probably one of the least likely places to find restorative justice, yet in this chapter Janzen brings restorative principles logically and naturally into the athletic realm. He asks, "Does the typical athletic social structure of accountability based on punitive consequences achieve the optimum results we want to believe come from the competitive athletic experience?" This chapter examines the tenets of restorative discipline and justice relative to the social structures and traditions of our organized sports culture. When an alleged violation suggests the need for a disciplinary response, restorative discipline and justice uses an approach that focuses primarily on the development of agreements that can restore a sense of moral balance and "rightness" between the relationships of the offending member and the rest of the group or team members. Furthermore, restorative discipline and justice incorporates both a commitment to personal accountability for all members and compassion for the individual whose behavior has strayed outside the agreements of the group, team, or community. The judgment of the "rightness" or "wrongness" of an individual's behaviors is largely determined on the basis of what has become acceptable behavior within a specific sport's culture. Remembering that restorative discipline and justice still focus on the maintaining of previously agreed-upon behavioral standards (i.e., the rules), the restorative model may actually be a well-suited disciplinary approach for all sports because it can better recognize and deal with the marginal behaviors that so commonly occur during these special events, especially in the heat of competition and split-second decisions often made when the lines of "right" and "wrong" begin to shift or blur.

In Chapter 17, "Restorative Justice in Disaster Management," Duane Ruth-Heffelbower applies restorative justice concepts and principles to disasters. When one thinks of disasters, images of mass casualties, extreme confusion, and major trauma come to mind. Most people would not imagine conflict with an

“offender” in such cases because nature is usually the source of these victimizations. However, by taking the reader through a series of vignettes, the author clearly shows how conflicts between the victims and those persons and agencies wanting to help in the recovery process emerge. The major culprit is the lack of organization among different care providers from different cultures and languages who are unfamiliar with local customs and attitudes and are usually not prepared to deal with conflicts. Basing his chapter mostly on his personal experiences and conversations with those providing aid to the victims of the Banda Aceh/Indian Ocean earthquake/tsunami disaster, Ruth-Heffelbower applies the basic principles of restorative practices to help the victims and their rescuers. He had trained some of the Indonesians trying to help those affected to cope with the multitude of conflicts that arose in the weeks and months after one of the worst disasters in recorded history. As he poignantly states, “For victims of disasters, restorative justice means being included in deciding how a project will be executed.” This chapter provides insights into the conflicting situations that emerged among those desperate to replace lost property and to bring back some degree of normalcy with those individuals and organizations that assumed to know what was needed without providing the actual victims a voice in the planning and execution of their own recoveries. The basic restorative principles from Ron Claassen (2002), of having those “responsible for the offense acknowledge the hurt, work together with the offended one to figure out how to make things as right as possible, and clarify the parties’ future intentions,” lead to resolving even these conflicts in disaster areas. All disaster management guidelines must include information about this inevitable part of the disaster—the need to resolve the multitude of conflicts that surely will occur.

In Chapter 18, “Hope and Reconciliation with Grief,” the focus is on the loss of a loved one as perhaps one of life’s most devastating experiences. Coping with the unnerving confusion, the intense pain, and the sense of extreme emptiness following the death of someone dear is a major challenge. This chapter, which discusses the use of restorative justice, explains the very personal, thoughtful, and analytical approach proposed by author Bonnie J. Redfern, the result of her search for a way to recover from the grief of the loss of her son. It suggests how, after loss and grief, a unique partnership between the transformative mediation of restorative justice and the companioning model of grief therapy can bring about reconciliation and peace. The hope of her new model is offered through restorative justice, especially in its peacemaking features. What had been created to confront the conflicts, confusions, and pains of victimization has been sensitively crafted into a viable philosophy for dealing with the unlikely event of loss and grief. Anyone who has suffered similarly or worked within the field of grief therapy will connect with the depth of her feelings and her ability to synthesize therapeutic wisdom, at times practical and at times spiritual, through the use of restorative justice principles.